



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE GENERAL LAW COMMITTEE
FEBRUARY 24, 2009**

I appreciate the opportunity to support House Bill 6470, An Act Concerning Residential Heating Oil and Propane Contracts.

This legislation requires heating oil or propane gas suppliers to have written contracts with consumers if there are charges or fees in addition to the unit price per gallon. Such contract may not exceed three years in duration.

The legislation also allows for a delivery surcharge for service outside the delivery area or outside the normal business hours without a written contract. The written contract must be in plain language and shall not include any liquidated damages amount beyond the actual damages to the retailer because of the consumer breach of the contract. Electronic contracts that comply with the Connecticut Electronic Signatures Act and its federal counterpart will satisfy the written contract requirements.

This draft is a partial work in progress, because I will submit an amendment barring current anticompetitive, restrictive requirements regarding propane tank ownership -- imposed by dealers on consumers. These requirements limit consumer choice and raise prices. Specifically, I urge the committee to consider requiring propane dealers to offer consumers the right to purchase their propane tanks for fair market value, including depreciation, at the end of their three year contract.

Finally, the legislation requires that a real estate disclosure statement provided to a prospective buyer indicate the existence of any propane gas tank in excess of 20 gallons and provide the name of the owner of the tank and any contract related to such tank.

My office has received hundreds of complaints from consumers concerning their heating oil or propane contracts. The complaints concern assessment of fees such as tank removal fees and minimum delivery charges and other financial penalties that restrict the ability of a consumer to choose another supplier. A propane dealer may quote a price per gallon and then assess a \$4 "environmental fee" on each delivery although the fee may bear no relation to any additional costs incurred by the dealer. In another example, a propane customer sought to switch to a lower cost supplier only to be told removing the tank would cost hundreds of dollars -- a cost never made known to the consumer. Retailers may claim that these fees were clearly explained over the phone to the consumer -- without any written contract of those provisions. The retailer may

refer to a taped telephone conversation -- up to 5 or 10 minutes in duration -- where such terms are explained. The consumer would have no record of such information.

Critical provisions such as fees that purport to pay for some maintenance service or environmental program often amount to significant additional costs for consumers. These provisions inhibit consumers from adequately shopping for the lowest price for heating oil or propane because the prices that are quoted may contain additional hidden fees.

House Bill 6470 simply requires that the retailer state all fees in writing unless the retailer is charging only a unit price plus any delivery fee already authorized under law. The legislation allows for current customers without a written contract to continue such relationship provided they were given a written contract that doesn't increase fees during the contract period and given notice that they may reject any contract within 60 days of receipt. This provision ensures that existing customers who were notified in writing of their existing contract obligations can continue to receive heating oil or propane if they neglect to sign such contract.

I urge the committee to consider the attached amendment regarding guaranteed price contracts for heating oil or propane. My office has been inundated with complaints regarding such contracts. This amendment defines a guaranteed price contract, increases to 80% the amount of guaranteed delivery that must be backed by futures contracts or physical supply contracts, requires notice to the Consumer Protection Commissioner of cancellation by the holder of any futures contract or physical supply contract and limits the obligations of a survivor of an estate to such contracts.

Finally, my office is working with the Department of Consumer Protection and industry representatives on an amendment to address additional concerns including limits on propane company ownership of propane tanks, increased civil and criminal penalties for violations of these regulations and prohibitions on retail price discrimination except if based on delivery distance or volume.

I urge the committee's favorable consideration of House Bill 6470 with the attached amendment.

OFFICE OF THE ATTORNEY GENERAL
2009 GENERAL ASSEMBLY SESSION
GENERAL LAW COMMITTEE
PROPOSED AMENDMENT TO HOUSE BILL 6470, AN ACT CONCERNING
RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACT

SUMMARY OF AMENDMENT: This proposal:

1. creates a definition of guarantee price contract to include all forms of prepaid and fixed price heating oil and propane contracts;
2. increases from 75% to 80% the amount of guarantee price contract commitments that must be obtained through futures or physical supply contracts;
4. requires any holder of a futures contract, surety bond, or physical supply contract to notify the Commissioner of Consumer Protection of any cancellation of such contract or commitment;
5. prohibits the application of the consumer's obligations under a guaranteed price contract to survivors or the estate unless expressly assigned to them, provided the estate would remain liable for any actual damage suffered by the retailer for a breach of such contract.

TEXT:

After line 183, add the following:

Sec. 4. Section 16a-23n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(a) As used in this section:

(1) "capped price contract" means an agreement where the cost to the consumer of heating oil or propane may not increase above a specified price per gallon but the consumer may pay less than the specified price under circumstances specified in such contract;

(2) "fixed price contract" means an agreement where the cost to the consumer of heating oil or propane is set at a specific price during the term of the contract;

(3) "futures contract" means a standardized, transferable, exchange-traded agreement that requires delivery of heating oil or propane at a specified price on a specified future date;

(4) "guaranteed price contract" means a fixed price or capped price contract or any other agreement where the per gallon price is set at a specified amount unless certain circumstances occur;

(5) "physical supply contract" means an agreement for wet barrels or wet gallons of propane that has been secured by the heating oil or propane dealer from a wholesaler;

(6) "surety bond" means a bond issued by a licensed insurance company on behalf of a dealer, guaranteeing that such company will reimburse any consumer losses incurred as a result of the failure of the dealer to fulfill an obligation to a consumer.

[(a)] (b) A contract for the retail sale of home heating oil or propane gas that offers a guaranteed price [plan] contract, including fixed or capped price contracts and any other similar terms, shall be in writing and the terms and conditions of such price plans shall be disclosed, including a description of the circumstances under which the price may increase or decrease. Such disclosure shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than twelve-point boldface type of uniform font.

[(b)] (c) A home heating oil or propane gas dealer that advertises a price shall offer said price for a period of no less than twenty-four hours or until the next advertised price is publicized, whichever occurs first.

[(c)] (d) No home heating oil or propane gas dealer shall enter into a [prepaid home heating oil or propane gas contract or a capped price per gallon home heating oil contract] guaranteed price contract unless such dealer has, within five business days after receipt of a valid guaranteed price contract, either: (1) Obtained and maintained heating oil or propane gas futures contracts, physical supply contracts or other similar commitments that allow such dealer to purchase, at a fixed price, heating oil or propane gas in an amount not less than [seventy-five] eighty per cent of the maximum number of gallons or amount that such dealer is committed to deliver pursuant to all [prepaid home heating oil or propane gas contracts] guaranteed price contracts entered into by such dealer [or that such dealer estimates is committed pursuant to all capped price per gallon home heating oil or capped price per unit propane gas contracts, respectively,]

or; (2) obtained and maintained a surety bond in an amount not less than fifty per cent of the total amount of funds paid to the dealer by consumers [pursuant to prepaid home heating oil or propane gas contracts] or that the dealer estimates will be paid to the dealer by consumers pursuant to all [capped price per gallon home heating oil or capped price per unit propane gas contracts, respectively] guaranteed price contracts. Such dealer shall maintain the amount of futures contracts, physical supply contracts, or the amount of the surety bond or secured letter of credit required by this subsection for the period of time for which such [prepaid home heating oil or propane gas contracts or capped price per gallon home heating oil or capped price per unit propane gas contracts] guaranteed price contracts are effective, except that the amount of such futures contracts, physical supply contracts, secured letter of credit, or surety bond may be reduced during such period of time to reflect any amount of home heating oil or propane gas already delivered to and paid for by the consumer.

~~[(d)]~~ (e) No [prepaid home heating oil or propane gas] guaranteed price contract shall require any consumer commitment to purchase home heating oil or propane gas pursuant to the terms of such contract for a period of more than eighteen months.

~~[(e)]~~ (f) Any [prepaid home heating oil or propane gas] guaranteed price contract shall indicate: (1) The amount of funds paid by the consumer to the dealer under such contract, (2) the maximum number of gallons of home heating oil or maximum amount of propane gas committed by the dealer for delivery to the consumer pursuant to such contract, and (3) that performance of such [prepaid home heating oil or propane gas] contract is secured by one of the [two] options described in subsection ~~[(c)]~~ (d) of this section. Any such contract shall provide that the contract price of any undelivered home heating oil or propane gas owed to the consumer under the contract, on the end date of such contract, shall be reimbursed to the consumer not later than thirty days after the end date of such contract unless the parties to such contract agree otherwise.

(g) Any person who enters into a futures contract, physical supply contract or who provides a bond pursuant to this section shall notify the Commissioner of Consumer Protection, in writing, upon cancellation of such commitment.

(h) The provisions of any guaranteed price contract shall not be enforceable against the estate or survivors upon the death of the customer signing such contract except that the estate may be liable for any actual damages suffered by the retailer because of the death of the customer and cancellation of such contract less good faith mitigation of such damages.